

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TOM HENSIEK, <i>et al.</i> ,	)	
Plaintiffs,	)	
vs.	)	Case No. 20-cv-377-DWD
	)	
BD. OF DIRECTORS OF CASINO QUEEN	)	
HOLDING CO., INC., <i>et. al.</i> ,	)	
Defendants.	)	
	)	
BD. OF DIRECTORS OF CASINO QUEEN	)	
HOLDING CO., INC., <i>et. al.</i> ,	)	
Crossclaim/Third-Party Plaintiffs,	)	
vs.	)	
	)	
CHARLES BIDWILL, III, <i>et al.</i> ,	)	
Crossclaim/Third-Party Defendants.	)	
	)	
CHARLES BIDWILL, III,	)	
TIMOTHY J RAND,	)	
Defendants/Counterclaimants,	)	
Crossclaim/Third Party Plaintiffs,	)	
vs.	)	
	)	
TOM HENSIEK, <i>et. al.</i> ,	)	
Counterclaim/Crossclaim/Third-Party	)	
Defendants.	)	
	)	

## ORDER

**DUGAN, District Judge:**

Now before the Court is the Joint Motion for Extension of Time filed by Defendants/Third-Party Plaintiffs the Board of Directors of Casino Queen Holding Company, Inc., the Administrative Committee of the Casino Queen Employee Stock Ownership Plan, Jeffrey Watson, and Robert Barrows (the “Casino Queen Defendants”), Charles Bidwill and Timothy J. Rand (hereinafter “Bidwill and Rand”, and sometimes

collectively referred to together with the Casino Queen Defendants as the “Third-Party Plaintiffs”).

### **Background**

On April 14, 2022, Plaintiffs Tom Hensiek, Jason Gill, and Lillian Wrobel (“Plaintiffs”) filed their Amended Class-Action Complaint for purported ERISA violations against multiple parties, including The Casino Queen Defendants, and Bidwill and Rand (Doc. 144). On May 19, 2022, Bidwill and Rand filed a motion to dismiss the claims asserted against them in the Amended Complaint, arguing that those claims are time-barred by the statute of repose in 29 U.S.C. § 1113 (*See* Doc. 155). This Motion to Dismiss is still under advisement with the Court.

Also, on May 19, 2022, Bidwill and Rand filed a Third-Party Complaint naming Philip B. Kenny as a Third-Party Defendant (Doc. 154). Bidwill and Rand assert contingent claims for contribution or indemnification against Third-Party Defendant Phillip B. Kenny in the event they are found liable to Plaintiffs (Doc. 154).

Likewise, on May 19, 2022, the Casino Queen Defendants also filed a Third-Party Complaint, naming Phillip B. Kenny, James C. Kenny, John E. Kenny, Patrick B. Kenny, and Joan Kenny Rose as Third-Party Defendants (Doc. 153). The Casino Queen Defendants also assert contingent claims for contribution or restitution against the Third-Party Defendants in the event they are found liable to Plaintiffs (*Id.*).

On August 15, 2022, the Third-Party Defendants moved to dismiss the Third-Party Complaints (*See* Doc. 307, Doc. 310). The Third-Party Plaintiffs now jointly move for an extension of their response deadlines to those motions to dismiss (Doc. 341).

### Discussion

The Third-Party Plaintiffs seek to extend their response deadline until 30 days after the resolution of the pending motion to dismiss filed by Bidwill and Rand at Doc. 155. The Third-Party Plaintiffs represent that counsel for the Third-Party Defendants, Phillip B. Kenny, James C. Kenny, John E. Kenny, Patrick B. Kenny, and Joan Kenny Rose, consent to their request for an extension. The Third-Party Plaintiffs also argue that good cause exists to extend their deadlines until after the resolution of Bidwill and Rand's motion to dismiss at Doc. 155 because if the motion is granted, the claims against Bidwill and Rand will be dismissed, and thus Bidwill and Rand's third-party claims against Third-Party Defendant Phillip B. Kenny will likewise be resolved.

However, the Motion does not suggest how the resolution of Bidwill and Rand's motion to dismiss would impact the claims pending against the Casino Queen Defendants or those third-party claims the Casino Queen Defendants assert against the Third-Party Defendants. See *Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 860 (7th Cir. 2017) (citing *Vaughn v. King*, 167 F.3d 347, 354 (7th Cir. 1999) ("It is not the responsibility of this court to make arguments for the parties.")). Indeed, a resolution in Bidwill and Rand's favor would presumably have little, if any, effect on the claims asserted against the Casino Queen Defendants in the Amended Complaint, or the claims the Casino Queen Defendants now assert against Third-Party Defendants Phillip B. Kenny, James C. Kenny, John E. Kenny, Patrick B. Kenny, and Joan Kenny Rose in their Third-Party Complaint.

Nevertheless, the Court observes that the Third-Party Plaintiffs have consented to

the proposed extension, and the Third-Party Plaintiffs represent that the Motion will not be used to delay the discovery process. Accordingly, the Motion (Doc. 341) is **GRANTED**. The Third-Party Plaintiffs, the Board of Directors of Casino Queen Holding Company, Inc., the Administrative Committee of the Casino Queen Employee Stock Ownership Plan, Jeffrey Watson, and Robert Barrows, Charles Bidwill, and Timothy J. Rand shall file their responses to the motions to dismiss filed by Third-Party Defendants' Phillip B. Kenny, James C. Kenny, John E. Kenny, Patrick B. Kenny, and Joan Kenny Rose (Doc. 307, Doc. 310) 30-days after the entry of an Order disposing of Rand and Bidwill's Motion to Dismiss at Doc. 155.

**SO ORDERED.**

Dated: September 13, 2022

The image shows a handwritten signature in black ink, which appears to read "David W. Dugan". The signature is written over a circular official seal. The seal features an eagle with spread wings, holding an olive branch and arrows, with a shield on its chest. The words "UNITED STATES DISTRICT COURT" are written in a circle around the eagle, and "SOUTHERN DISTRICT OF ILLINOIS" is written at the bottom of the seal.

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DAVID W. DUGAN  
United States District Judge